



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the return of double the security deposit pursuant to section 38 and 67 of the *Act*;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The landlord's agent (the landlord) stated that the tenant was served with the notice of hearing package via Canada Post Registered Mail on September 2, 2017. The landlord did not submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package via Canada Post Registered Mail on September 2, 2017. The tenant confirmed service as claimed by the landlord. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence on March 14, 2018 via Canada Post Registered Mail. The landlord confirmed receiving the package late on March 16, 2018 as claimed by the tenant. The landlord argued that he has had insufficient notice or opportunity to review and respond to the tenant's evidence.

As a result of the tenant's insufficient service of the notice of hearing package and the submitted documentary evidence, this hearing was adjourned to allow the landlord an opportunity to review and respond to the tenant's application and submitted documentary evidence. Both parties were advised that no new evidence was to be

submitted nor would it be accepted, except to allow the landlord to respond to the tenant's documentary evidence only.

On June 5, 2018, the hearing was reconvened via conference call where both parties attended and made submissions.

During the hearing it was clarified that the named landlord was an agent of the landlord and that both parties agreed to the landlord's application being amended to reflect the named company instead.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit and recovery of the filing fee?

Is the tenant entitled to a monetary order for return of double the security deposit, for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that a signed tenancy agreement was made between these two parties, but that neither party submitted a signed copy. The landlord provided affirmed testimony that the monthly rent was \$880.00 and that a security deposit of \$440.00 was paid on June 10, 2016. The tenant disputed part of this claim stating that monthly rent began as \$880.00, but was later increased to \$910.00 and that a security deposit of \$440.00 was paid on June 10, 2016.

Both parties agreed that a fire incident took place on August 16, 2017 which triggered this incident. Both parties agreed that all of the affected tenants of the building were re-located for a 3 day period by emergency services at no cost.

The landlord seeks a monetary claim of \$440.00 which consists of:

\$440.00	Loss of ½ of September 2017 Rent, due to no notice
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The tenant seeks a monetary claim of \$1,351.00 which consists of:

\$880.00	Return of Double the \$440.00 Security Deposit
\$471.00	½ months rent, loss of use due to fire

\$100.00 Filing Fee

The landlord stated that the tenant failed to provide notice to end the tenancy and as a result the landlord suffered a loss of $\frac{1}{2}$ the September 2017 Rent. Both parties agreed that after the fire incident on August 16, 2017 the tenant did not return to occupy the rental unit. The landlord stated that the tenant vacated the rental unit without proper notice. The tenant disputed this claim stating that verbal notice was given to the landlord on August 17, 2017 and again the same date in writing. The landlord disputes this stating that he had only received a request for the return of the security deposit on August 19, 2017 and when questioned the tenant was “confused” and “incoherent” in his explanation. The tenant disputed this stating that after the initial notice to end the tenancy, the tenant mailed a written notice via regular mail with a request for return of the \$440.00 security deposit on August 19, 2017. The landlord confirmed that he only received the request for the security deposit and no notice to end tenancy. The landlord stated that after September 15, 2017 the rental unit was repaired (painted and minor repairs) between September 15-29, 2017. The landlord clarified that he only seeks compensation for the loss of rent for the period September 1-15, 2017 equal to $\frac{1}{2}$ of the monthly rent of \$440.00.

The tenant stated that as the landlord has failed to return the \$440.00 security deposit as per section 38(1) of the Act, the landlord is subject to section 38 (6) for failing to comply with the Act. The landlord confirmed that he received the tenant’s request for return of the \$440.00 security deposit on August 19, 2017. The landlord’s application for dispute shows that he applied for dispute of the security deposit on September 1, 2017 within the allowed timeframe. The tenant also seeks compensation of \$471.00 for loss of use the rental unit for $\frac{1}{2}$ of the monthly rent. During the hearing the tenant initially stated that this was for compensation for expenses and later clarified that this was for loss of use of the rental unit. The landlord argued that monthly rent was \$880.00 and the tenant initially argued that monthly rent was \$990.00 and later \$910.00. I note that if \$471.00 was $\frac{1}{2}$ of the monthly rent that would make the monthly rent \$942.00. The tenant was unable to clarify how \$471.00 was equal to $\frac{1}{2}$ of the monthly rent. The landlord also argued that the tenant’s rental unit was not directly affected by the fire and that all such tenants returned to their units on August 23, 2017 after receiving emergency shelter.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, the landlord seeks compensation for the loss of rental income of \$440.00 for ½ of the monthly rent of \$880.00. The tenant has argued that monthly rent was \$910.00. As neither party provided a copy of the signed tenancy agreement, I find that I prefer the evidence of the landlord over that of the tenant in this regard. Both parties agreed that the rent began at \$880.00, but the tenant was unable to provide sufficient evidence that rent was later increased to \$910.00. I state this as the tenant has provided an initial claim that monthly rent was \$990.00 at the end of tenancy (later contradicted by the tenant when referring to the tenant's documentary evidence) and then later \$910.00. I find that the tenant has failed to provide sufficient evidence of monthly rent. As such, I find that rent at the end of tenancy was \$880.00.

On the issue of notice to end tenancy, the tenant has claimed that the landlord was provided notice verbally and again in writing on August 17, 2017 and when this was refused by the landlord it was mailed to the landlord on August 19, 2017 with a request for return of the security deposit. The landlord provided affirmed testimony that he only received a written request for return of the security deposit on August 19, 2017. I find that I prefer the evidence of the tenant over that of the landlord in this instance. If a regular mail letter was sent to the landlord on August 19, 2017, I find it next to improbable that Canada Post would deliver it on the same date. As such, I find that the landlord was served with the tenant's notice to end tenancy on August 20, 2017 and as such, the landlord is deemed served with the notice on August 20, 2017. In this case, the landlord stated that no efforts were made to re-rent the unit and as such, the landlord has failed to mitigate any possible losses by re-renting the unit as soon as possible. The landlord's claim for \$440.00 for the loss of rent is dismissed.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

In this case, the landlord was found to have been provided notice to end the tenancy on August 20, 2017 which I will deem the end of the tenancy for August 31, 2017. The landlord applied for dispute of returning the security deposit on September 1, 2017 and as such, the landlord was in compliance with section 38 (1) of the Act by filing an application for dispute within the allowed timeframe. The tenant is entitled to return of the original \$440.00 security deposit. The tenant's request for compensation under section 38(6) is dismissed.

On the tenant's request for compensation for the loss of use equal to \$471.00 for ½ of the monthly rent, I find that the tenant has failed. The tenant was not able to clarify how \$471.00 would equal ½ of the monthly rent of \$880.00, even if I accepted the tenant's claim that monthly rent was either \$990.00 (\$495.00) or \$910.00(\$455.00). The landlord provided undisputed evidence that all tenants not directly affected by the fire were able to return to their rentals on August 23, 2017. This portion of the tenant's application is dismissed.

The tenant has established a total monetary claim of \$440.00 for return of the original security deposit. I find that as the tenant has only been partially successful in his application that he is only entitled to \$50.00 for recovery of the filing fee.

Conclusion

The landlord's application is dismissed.

The tenant is granted a monetary order for \$490.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 5, 2018

Residential Tenancy Branch